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**AUG 04 2008**

In re Application of :  
Cavanna, et al. :  
Application No. 10/668,469 :  
Filed: September 22, 2003 :  
Attorney Docket No. 10030875-1 :

**ON PETITION**

This is a decision on the petition under 37 CFR 1.181 filed on July 11, 2008, to withdraw the holding of abandonment.

The petition is **DISMISSED**.

The application became abandoned on June 18, 2008, after no response was received to the Notice of Allowance and Issue Fee Due mailed March 17, 2008, which set a statutory period for reply of three-months from its mailing date. No response was received within the allowable period, and the application became abandoned on June 18, 2008. A Notice of Abandonment was mailed on July 8, 2008.

In the instant petition, petitioner maintains that the Notice of Allowance and Issue Fee Due was not available to petitioner until June 12, 2008, and that the period for response should be reset because most of the statutory period for reply had elapsed before the Notice was received.

Petitioner's argument is not persuasive. This issue at hand is complicated by the fact that petitioner received the Notice of Allowance and Issue Fee Due late in the statutory period set for reply, but with some time remaining in the statutory period for reply. Yet, petitioner filed no response to the notice and did not file the instant petition until July 11, 2008, even though the Notice of Allowance and Issue Fee Due was viewable on June 12, 2008, by petitioner's own admission. Section 710.06 of the Manual of Patent Examining Procedure provides, in pertinent part, that:

The Office will grant a petition to restart the previously set period for reply to an Office action to run from the date of receipt of the Office action at the correspondence address when the following criteria are met:

(A) the petition is filed within 2 weeks of the date of receipt of the Office action at the correspondence address;

(B) a substantial portion of the set reply period had elapsed on the date of receipt (e.g., at least 1 month of a 2- or 3-month reply period had elapsed); and

(C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., a copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, a copy of the envelope (which contained the Office action) having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), and (2) a statement setting forth the date of receipt of the Office action at the correspondence address and

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explaining how the evidence being presented establishes the date of receipt of the Office action at the correspondence address.

Arguably, the most appropriate remedy would have been for petitioner to file a petition to restart the time period running against the Notice of Allowance and Issue Fee Due immediately after receipt thereof. Instead, it appears that petitioner allowed the application to go abandoned with no further action being taken on the application until July 11, 2008, with the filing of the instant petition. A petition to withdraw the holding of abandonment is only proper where the application is improperly abandoned. It does not appear that the holding of abandonment was improper in this instance because petitioner received the Notice of Allowance and Issue Fee Due within the period set for reply and failed to respond. Further, even assuming that the Notice of Allowance and Issue Due was not viewable until June 12, 2008, petitioner did not avail himself of the remedy allowed by MPEP 710.06 cited above. Petitioner's failure to file a timely petition to restart the period for reply to the Notice of Allowance and Issue Fee Due belies petitioner's argument that the holding of abandonment should be withdrawn. The petition is dismissed, accordingly.

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee (\$1,540.00 for a large entity and \$770.00 for a verified small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
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By facsimile: (571) 273-8300  
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned (571) 272-3222.



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